THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.16411 of 2004

09.8.2007

Between:

Smt.N.V.Ramanamma @ Padmavatamma, W/o.Late Ranga Rao
And another

…Petitioners

AND

The District Collector, Visakhapatnam District
And others.

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.16411 of 2004

ORDER:

First petitioner aged about 93 years is the mother of the second petitioner. Both of them filed the writ petition challenging a communication in Rc.No.4923/2003-F2, dated 08.7.2004, from the first respondent to the second respondent in effect directing to file appeal against the order dated 09.1.1993 in I.A.No.1/91 passed by the third respondent, namely, the Mandal Revenue Officer, Pendurthi Mandal. Petitioners also seek a direction to the respondents to implement the orders of the third respondent whereunder the petitioners were allegedly granted ryotwari patta for an extent of Acs.61.10 in survey No.5 and Acs.4.50 in survey No.6 situated at Narava village of Pendurthi Mandal in Visakhapatnam District (hereafter called, the petition schedule land) as well as the orders of the second respondent, namely, the Revenue Divisional Officer, Visakhapatnam (RDO), dated 29.11.1999.

The brief fact of the matter is as follows. The great grandfather of the second petitioner, N.Venkata Suryanarayana Rao Panthulu, had purchased about Acs.222.00 covered by T.D.No.3072 under three registered sale deeds from Gudla Chittamma, Puvvada Lakshmi Narasimham and Puvvada Savitramma. This property was partitioned among the family members under a deed dated 14.7.1914 in which the wife of Venkata Suryanarayana Rao Panthulu was allotted Acs.225.00. After her death the same was inherited by her son Venkata Suryanarayana Rao Panthulu and after his death his widow Suramma inherited the property. It is alleged that Suramma adopted Ranga Rao, who is the husband of first petitioner and father of second

petitioner. After his death, second petitioner was adopted by Suramma.

Ranga Rao during his lifetime sold Acs.160.00 under five sale transactions between the period from 1965 to 1970 and he was left with Acs.65.45. The land was allegedly shown as personal inam to Venkata Suryanarayana Rao Panthulu and was in possession of Ranga Rao and thereafter with the petitioners. After coming into force of Andhra Pradesh (Andhra Area) Inams (Abolition & Conversion Into Ryotwari) Act, 1956 (the Act, for brevity), it is alleged, the petition schedule land was shown in a statement of inams of Narava village and in revision survey the same (old survey No.448) is correlated to survey Nos.5 and 6. In 1991, petitioners made application for grant of ryotwari patta under the Act and also sought Pattadar Pass Books (PPBs) and Title Deeds (TDs) from the third respondent. After conducting enquiry into the application, I.A.No.1/91, third respondent by order dated 09.1.1993 granted ryotwari patta for an extent of Acs.61.10 in survey No.5 and Acs.4.50 in survey No.6. The Mandal Surveyor was also instructed to incorporate the names of the petitioners in the revenue records, after sub-division. However the ryotwari patta was not implemented by mutating and incorporating the names of the petitioners in the revenue records. They therefore approached the RDO for necessary redressal. The RDO by order dated 29.11.1999 allegedly affirmed the orders of the third respondent but still the patta was not implemented. Petitioners made representations to the third respondent, in vain. At that stage, first respondent addressed impugned communication to the second respondent directing to get an appeal filed by the Mandal Revenue Officer, Visakhapatnam – fourth respondent herein; against the order dated 09.1.1993 passed by the Mandal Revenue Officer, Pendurthi Mandal – third respondent.

This Court while admitting the writ petition granted interim stay of all further proceedings pursuant to the directions of the first respondent in the impugned order. All the respondents moved WVMP No.1340 of 2007. As the submissions for the purpose of interlocutory applications and the main writ petition are the same, the matter was heard finally with the consent of both the counsel and is being disposed of at the interlocutory stage itself.

In the counter affidavit filed by the third respondent, the following position is revealed. Nrusimharayapura Agraharam, known as Narava, is a minor inam with TD Nos.171, 1024 and 3072. The particulars of the old survey numbers are also mentioned in the counter affidavit, it is not necessary to refer to the details. It is stated that the land covered by survey Nos.5 and 6 correlating to old survey

No.448, as per settlement fair adangal of Narava is classified as Konda poramboke with an extent of Acs.61.10 and Acs.4.50 respectively. Prior to coming into force of Andhra Pradesh (Amendment) Act No.2 of 1975, the Inams of Deputy Tahsildar (IDT), Visakhapatnam, notified the decision in Form No.2 under Section 3(2) of Act to the effect that survey Nos.5 and 6 are Konda poramboke in settlement records. No claim was filed after publication of Form No.2, which has become final. In 1989, an extent of Acs.165.50 classified as Konda poramboke, was alienated to Visakhapatnam Economic Promotion Zone, as per the orders of the Government in G.O.Ms.No.653, Revenue Department, dated 30.6.1989. In 1992, the third respondent conducted enquiry under Section 3(3) of the Act and declared the land in survey Nos.5 and 6 as inam land in Zamindari village, that it is not held by any institution and accordingly granted patta for an extent of Acs.65.60 in favour of Namburi Ranga Rao, by order dated 09.1.1993, ignoring the decision in Form No.2 published in Visakhapatnam District Gazette dated 05.5.1960. When the petitioners sought for issue of PPB and for effecting mutation based on 1993 ryotwari patta, second respondent examined the matter and suggested for revision under Section 14-A of the Act. However as directed by the first respondent, it is decided to file appeal against patta granted to the petitioners. Petitioners filed reply affidavit denying counter averments and further stated that there was yet another Gazette notification dated 15.7.1965 showing the petition schedule land as inam land in Zamindari village not held by any institution.

Learned Senior Counsel for the petitioners submits that on 29.11.1999 second respondent confirmed the orders of the third respondent issued on 09.1.1993 and therefore he himself cannot review his own order and refer the matter to first respondent for filing appeal. He secondly submits that the RDO himself is appellate authority under Section 7(2) of the Act and therefore question of appellate authority himself taking active role in getting the appeal filed by the Mandal Revenue Officer, Visakhapatnam – fourth respondent, before him is unfair and arbitrary. Learned Senior Counsel also made submissions on the merits of the case but for the purpose of this order, it is not necessary to go into these issues. **Opposing** the writ petition learned Assistant Government Pleader for Revenue (General-A) submits that by impugned communication District Collector only directed the RDO to see that appeal is filed and even before appeal is filed and notice of appeal is issued, petitioners filed the writ petition. The writ petition is premature and is not maintainable. He further submits that after coming into force of Act No.2 of 1975, poramboke land including existing poramboke vests in the Government free from

all encumbrances and therefore ryotwari patta granted by the third respondent ignoring the earlier position in Form No.2 under Section 3 of the Act is *ex facie* illegal. He lastly submits that all the questions raised by the petitioners herein can as well be raised before appellate authority. He also points out that the RDO initiated action in his capacity as the head of the revenue division and not as revenue court as defined in Section 2(g) of the Act and therefore the petitioners cannot complain any prejudice to them.

After perusing the pleadings and documents on record and considering the rival submissions, this Court is of considered opinion, the writ petition is misconceived and the same is not maintainable. The reasons are as follows. Along with the reply affidavit, petitioners have annexed Visakhapatnam District Gazettes dated 05.5.1960 and 15.7.1965. As per the first Gazette notification, original survey No.448, which the petitioners correlate to TD No.3072 and survey Nos.5 and 6, is not included. TD No.3072 is correlated to original survey No.280, which correlates to seven new survey numbers such as 7/1, 7/2, 7/4A and 7/4 to 8. In the second notification, however, TD No.3072 is correlated to original survey No.448. It is quite curious as to how TD No.3072 correlated to original survey No.280 in the first Gazette found place as original survey No.448 in second notification. This certainly needs an enquiry. Secondly when the decision in Form NO.2 under Section 3(3) of the Act published in Gazette notification dated 05.5.1960 in which survey Nos.5 and 6 were not included, had become final, the MRO, Pendurthy, exercirising the jurisdiction of IDT could not have issued another decision under Section 3(3) of the Act pursuant to which patta was granted. *Prima facie*, therefore, first respondent was justified in directing subordinates to file appeal. Thirdly as per Section 7(2) of the Act, against a ryotwari patta granted by the IDT, appeal is provided to Revenue Court. As defined in Section 2(g) of the Act, Revenue Court means the Court of RDO having jurisdiction over the matter. It is more often than not, in public law a situation would arise – in law it is justified – where the same administrative authority is conferred with quasi-judicial powers either as an appellate authority or revisional authority under the statute. In such an event prejudice cannot be attributed to such authority as, such authority would be discharging dual role. In this case, as averred in the counter affidavit, which is not denied, when the petitioners sought mutation and PPB, the RDO enquired into the matter and suggested for revision under Section 14A of the Act. It only means that the RDO was looking after the matter as an administrative authority, as such, he cannot *suo motu* entertain appeal. Presumably for this reason, RDO addressed a letter on 18.9.2003 seeking clarification, considering

which the impugned letter was issued. The same does not in any manner suffer from illegality or infirmity nor violative of principles of natural justice.

A submission is made by the learned Senior Counsel that when the MRO, Pendurthy Mandal, is the IDT, who issued ryotwari patta on 09.1.1993, an appeal cannot be filed by the MRO, Visakhapatnam. As seen from the two Gazette notifications referred to herein above Narava village was initially part of Visakhapatnam Taluk. At the relevant time there used to be a Deputy Tahsildar (Inams), incharge of the matters that arise under the Inams Abolition Act and whenever an order is passed granting ryotwari patta to a person or to an institution, the Tahsildar used to file appeal. In that view of the matter if the MRO (now designated as Tahsildar) of Visakhapatnam is directed to file appeal. This Court fails to understand what would be the prejudice that would be caused to the petitioners by this. Some one has to represent the interest of the State having regard to Section 2(A) of the Act and in this case the District Collector thought it fit to direct the Tahsildar, Visakhapatnam, to file appeal. There is nothing illegal in the same. As rightly pointed out by the learned Government Pleader, petitioners can raise all the submissions before the appellate authority – Revenue Court – as defined under Section 2(g) of the Act. This writ petition is premature. Any observations hereinabove are made only for the purpose of this order and as and when appeal is filed, the Revenue Court/RDO shall have to consider the matter independently after considering the entire material available on record.

The writ petition is misconceived and is accordingly dismissed. No costs.

August , 2007 (**V.V.S.RAO,J**)

NOTE:
Dispatch order copy in
One week.
(By order)
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